

1 **Rule 1.18. Duties to Prospective Client.**

2 (a) A person who discusses with a licensed paralegal practitioner the possibility of forming a
3 licensed paralegal practitioner-client relationship with respect to a matter is a prospective client.

4 (b) Even when no licensed paralegal practitioner-client relationship ensues, a licensed
5 paralegal practitioner who has learned information from a prospective client shall not use or
6 reveal that information, except as Rule 1.9 would permit with respect to information of a former
7 client.

8 (c) A licensed paralegal practitioner subject to paragraph (b) shall not represent a client with
9 interests materially adverse to those of a prospective client in the same or a substantially related
10 matter if the licensed paralegal practitioner received information from the prospective client that
11 could be significantly harmful to that person in the matter, except as provided in paragraph (d). If
12 a licensed paralegal practitioner is disqualified from representation under this paragraph, no
13 attorney or licensed paralegal practitioner in a firm with which that licensed paralegal
14 practitioner is associated may knowingly undertake or continue representation in such a matter,
15 except as provided in paragraph (d).

16 (d) When the licensed paralegal practitioner has received disqualifying information as
17 defined in paragraph (c), representation is permissible if:

18 (d)(1) both the affected client and the prospective client have given informed
19 consent, confirmed in writing, or;

20 (d)(2) the licensed paralegal practitioner who received the information
21 took reasonable measures to avoid exposure to more disqualifying information than
22 was reasonably necessary to determine whether to represent the prospective client; and

23 (d)(2)(i) the disqualified licensed paralegal practitioner is timely screened from any
24 participation in the matter and is apportioned no part of the fee therefrom; and

25 (d)(2)(ii) written notice is promptly given to the prospective client.

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28 Comment

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30 [1] Prospective clients, like clients, may disclose information to a licensed paralegal practitioner,
31 place documents or other property in the licensed paralegal practitioner's custody, or rely on the

32 licensed paralegal practitioner's advice. A licensed paralegal practitioner's consultations with a
33 prospective client usually are limited in time and depth and leave both the prospective client and
34 the licensed paralegal practitioner free (and sometimes required) to proceed no further. Hence,
35 prospective clients should receive some but not all of the protection afforded clients.

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37 [2] A person becomes a prospective client by consulting with a licensed paralegal practitioner
38 about the possibility of forming a licensed paralegal practitioner-client relationship with respect
39 to a matter. Whether communications, including written, oral, or electronic communications,
40 constitute a consultation depends on the circumstances. For example, a consultation is likely to
41 have occurred if a licensed paralegal practitioner, either in person or through the licensed
42 paralegal practitioner's advertising in any medium, specifically requests or invites the
43 submission of information about a potential representation without clear and reasonably
44 understandable warnings and cautionary statements that limit the licensed paralegal practitioner's
45 obligations, and a person provides information in response. See also Comment [4]. In contrast, a
46 consultation does not occur if a person provides information to a licensed paralegal practitioner
47 in response to advertising that merely describes the licensed paralegal practitioner's education,
48 experience, areas of practice, and contact information, or provides legal information of general
49 interest. Such a person communicates information unilaterally to a licensed paralegal
50 practitioner, without any reasonable expectation that the licensed paralegal practitioner is willing
51 to discuss the possibility of forming a licensed paralegal practitioner - client relationship, and is
52 thus not a "prospective client". Moreover, a person who communicates with a licensed paralegal
53 practitioner for the purpose of disqualifying the licensed paralegal practitioner is not a
54 "prospective client."

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56 [3] It is often necessary for a prospective client to reveal information to the licensed paralegal
57 practitioner during an initial consultation prior to the decision about formation of a licensed
58 paralegal practitioner - client relationship. The licensed paralegal practitioner often must learn
59 such information to determine whether there is a conflict of interest with an existing client and
60 whether the matter is one that the licensed paralegal practitioner is willing to undertake.
61 Paragraph (b) prohibits the licensed paralegal practitioner from using or revealing that
62 information, except as permitted by Rule 1.9, even if the client or licensed paralegal practitioner

63 decides not to proceed with the representation. The duty exists regardless of how brief the initial
64 conference may be.

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66 [4] In order to avoid acquiring disqualifying information from a prospective client, a licensed
67 paralegal practitioner considering whether or not to undertake a new matter should limit the
68 initial consultation to only such information as reasonably appears necessary for that purpose.
69 Where the information indicates that a conflict of interest or other reason for non-representation
70 exists, the licensed paralegal practitioner should so inform the prospective client or decline the
71 representation. If the prospective client wishes to retain the licensed paralegal practitioner, and if
72 consent is possible under Rule 1.7, then consent from all affected present or former clients must
73 be obtained before accepting the representation.

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75 [5] A licensed paralegal practitioner may condition a consultation with a prospective client on
76 the person's informed consent that no information disclosed during the consultation will prohibit
77 the licensed paralegal practitioner from representing a different client in the matter. See Rule
78 1.0(f) for the definition of informed consent. If the agreement expressly so provides, the
79 prospective client may also consent to the licensed paralegal practitioner's subsequent use of
80 information received from the prospective client.

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82 [6] Even in the absence of an agreement, under paragraph (c), the licensed paralegal practitioner
83 is not prohibited from representing a client with interests adverse to those of the prospective
84 client in the same or a substantially related matter unless the licensed paralegal practitioner has
85 received from the prospective client information that could be significantly harmful if used in the
86 matter.

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88 [7] Under paragraph (c), the prohibition in this Rule is imputed to other licensed paralegal
89 practitioners as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if
90 the licensed paralegal practitioner obtains the informed consent, confirmed in writing, of both the
91 prospective and affected clients. In the alternative, imputation may be avoided if the conditions
92 of paragraph (d)(2) are met and all disqualified licensed paralegal practitioners are timely
93 screened and written notice is promptly given to the prospective client. See Rule 1.0(m)

94 (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened
95 licensed paralegal practitioner from receiving a salary or partnership share established by prior
96 independent agreement, but that licensed paralegal practitioner may not receive compensation
97 directly related to the matter in which the licensed paralegal practitioner is disqualified.

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99 [8] Notice, including a general description of the subject matter about which the licensed
100 paralegal practitioner was consulted, and of the screening procedures employed, generally should
101 be given as soon as practicable after the need for screening becomes apparent.

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103 [9] For the duty of competence of a licensed paralegal practitioner who gives assistance on the
104 merits of a matter to a prospective client, see Rule 1.1. For a licensed paralegal practitioner's
105 duties when a prospective client entrusts valuables or papers to the licensed paralegal
106 practitioner's care, see Rule 1.15.